(3)

No. 90-922

In The
Supreme Court of the United States
October Term, 1990

ANDREW D. SCHOLBERG, et. al.,

Petitioners,

v.

AARON S. LIFCHEZ, et. al.,

Respondents.

AMICI BRIEF OF GEORGE LUCAS, THE NATIONAL BLACK COALITION FOR TRADITIONAL VALUES, AND OTHER BLACK LEADERS AND BLACK ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Note: This Amici Brief is being filed with the consent of all of the parties. Consents are on file with the Office of the Clerk.

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INTEREST OF AMICI

The amici are Black leaders and Black organizations from throughout the United States of America who are shocked that unborn children are soon to be sold for experimentation and body parts in the State of Illinois since the Illinois law prohibiting such abominations has been struck down by the federal courts to date.

As the decendants of slaves and fully aware of the contribution that Black Americans have made to this Great Nation, the amici stand firmly against the idea of unborn children being considered the chattel property of their mothers. The sale of unborn children is slavery which must not be allowed to raise its ugly head again in this Great Nation. To suggest that privacy rights extend outside a woman's body proves the unsoundness of *Roe*.

The amici strongly urge that the Supreme Court of the United States stop this tragedy before it begins and not faint before the task as the majority did in the infamous *Dred Scott* decision.

George Lucas and the
National Black Coalition for Traditional Values
Petersburg, Virginia

Rev. Hiram Crawford and the
Pro-Life Pro-Family Coalition
Chicago, Illinois

Dr. Dolores Bernadette Grier and the
Voters Against Abortion
New York, New York

Pastor Joe Dallas and the
Blacks for Life
Milwaukee, Wisconsin

Rev. E. W. Jackson, Sr., and the
Exodus Movement
Boston, Massacusetts

Rev. Cleveland Sparrow and the
Sparrow World Baptist Church
Washington, D.C.

Barbara Bell and the
Massachusetts Blacks for Life
Medford, Massachusetts

Rev. St. George Cross and the
Society for the Advancement of Families Everywhere
Randalls Town, Maryland

Pastor Greg Keith and the
Black Alliance for the Family
New Brighton, Minnesota

SUMMARY OF ARGUMENT

As Black Americans, we are well aware that the infamous *Dred Scott* decision denied the humanity of our ancestors who helped form this great nation. When the Court denied standing to Dred Scott, he was denied the right to protect himself from any wrong--no matter how unjust.

As Black Americans, we are also well aware that the infamous *Roe v. Wade* decision has decimated our people. As Black Americans constitute an ever dwindling percentage of the American people, we have the largest percentage of abortions to live births. The number of Black Americans whose young lives have been terminated by abortion has already far exceeded the number of Black Americans who were freed by the Emancipation Proclamation and the Civil War.

And now once again the federal courts have chosen to deny humanity. The District Court and the Appellate Court denied standing to Baby Scholberg. Just like Dred Scott, she was denied the right to protect herself from any wrong--no matter how unjust.

If this Court does not grant certiorari, Black unborn children will be sold into the slavery of experimentation and the medical market for body parts. Make no mistake--young Black unborn babies procured from financially desperate Black expectant mothers will provide the majority of these children. Once again, Black Americans will be slaves. Only reversing both *Dred Scott* and *Roe v. Wade* ab initio can right the wrongs that these decisions have perpetrated. As Black Americans, we ask for justice for all.

ARGUMENT

The United States Constitution, Amendment XIII, provides that:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Nowhere in the the Thirteeenth Amendment is either the word "person" or "citizen" mentioned. Clearly, slavery would include the sale of any "citizen" or any "person" regardless of whether that "person" is a "citizen." But the Thirteenth Amendment is much broader than that.

At the time of the enactment of the Thirteenth Amendment the vast majority of Black Americans were not recognized as either "citizens" nor "persons" under then recent judicial decisions. See *Dred Scott v. Sandford*, 60 U.S. 393, 16 L.Ed. 691 (1857).

The Thirteenth Amendment extended to all Black Americans who were then considered non-persons.

The original intent of the Thirteenth Amendment is to prohibit the sale of any human being--whether that human being is a citizen, a person or a non-person.

The principle intent and the principles intended by the Thirteenth Amendment bars the sale of unborn children. The sale of an unborn child is an act of slavery.

Simply stated, it is unconstitutional to sell, to offer to sell, to buy and to offer to buy an unborn child within the United States, or any place subject to their jurisdiction.

It matters not that the sale might have originated while the child was still in utero. It matters not that the child is not considered a person under either state or federal law. The sale is still an act of slavery.

We realize that some medical knowledge might be gained by selling unborn children for experimentation. Certainly, the Nazi experiments on concentration camp victims did yield some medical knowledge. But that did not make these actions of the Nazis any less reprehensible or any more justified. In like manner, selling unborn children today is reprehensible and not justified. But what is most important, it is unconstitutional.

How then can such an abominable practice be even suggested? Certainly, when mention is made of transferring brain tissue to Alzheimer's and Parkinson's patients, we are speaking of fully formed babies. Similarly, when mention is made of transferring pancreatic tissue to diabetic patients, we are also speaking of fully formed babies. And when mention is made of scalping the child and transferring the scalp to balding men, we are also speaking of fully formed babies.

Moreover, we must not forget that only live tissue can be used in such transplants. Nancy Cruzen suffered irreversible brain damage through being denied oxygen for just six minutes. Latter term saline abortions in which the child dies in utero will not work. The child is dead in utero for too long. The tissues and organs of the unborn child are no longer suitable for transplanting.

The taking of organs from fully formed babies can be done either through caesarian abortions or induced abortions in which the child is born live. And while the child is beginning to die, since he is denied proper medical care, the organs are removed from the child's still living body.

How can an expectant mother decide that a child be harvested for body parts when the same child is of sufficient maturity to survive sans utero in a hospital unit specifically designed for premature babies of the same maturity? And the child can be alive sans utero when the organs are removed from his little body?

The answer is found in the tragic *Roe* decision. *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). If ever a case has proven unsound in principle and unworkable in practice, *Roe* is the one.

In the instant case the District Court abandoned both the case and controversy requirement and the limitations imposed upon facial void for vagueness challenges. The Appellate Court failed to acknowledge the legal personhood of unborn children in the State of Illinois since the *Webster* decision. *Webster v. Reproductive Health Services*, 109 S.Ct. 3040, 106 L.Ed.2d 410 (1989), and Illinois Revised Statutes, Chapter 38, Section 81-21. Both courts failed to recognize the apparent constitutional violations of the Thirteenth Amendment.

We realize that the Court is waiting for an appropriate case to thoroughly review the *Roe* decision. We strongly believe that this case is the appropriate case. No case more clearly presents the unworkability of *Roe*. No case more clearly presents the unsoundness of *Roe*. And if not to stop the harvesting of the unborn, when?

Moreover, we firmly believe that the original intent of the Consitution and the governing principles intended by that great document require the explicit reversal of *Roe* and more.

First, each and every State of this Great Nation must consider the life and liberty interests of all unborn children from conception.

Second, each and every State of this Great Nation has an affirmative obligation to safeguard the life and liberty interests of every viable unborn child. All viable abortions must be prohibited unless necessary to save the life of the expectant mother and even then all necessary efforts must be made to save the life of the child.

If in the exercise of her first liberty interests found in *Griswold v. Connecticutt*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), a woman becomes pregnant, her second liberty interests must be balanced against the life and liberty interests of her unborn child. Once a child becomes viable, the expectant mother must allow the unborn child to live.

Certainly, the responsibilities and obligations of the expectant father are established by a single act of intimacy. He can be ordered to pay the medical expenses incurred in the birth, child support, medical and dental expenses incurred during the minority of the child and college or trade school expenses upon the child reaching adulthood. All of these responsibilities and all of these obligations come from one act of intimacy.

In like manner, an expectant mother carrying a viable child should have the responsibility and obligation to give the child life.

Moreover, the infamous *Dred Scott* decision must be reversed. We realize that the purpose of the Thirteenth Amendment is to end slavery and involuntary servitude of Black Americans. We realize also that the purpose of the Fourteenth Amendment was to establish citizenship of Black Americans. Finally, we realize that these two Amendments to the Constitution effectively reverse the result of the infamous *Dred Scott* decision.

However, our forefathers who helped form this Great Nation prior to the enactment of these two Amendments are still not considered sufficiently human to protect themselves in court from any wrong--no matter how unjust.

Our forefathers are one of only two groups of Americans whose total humanity is still denied. The other group is unborn children.

The infamous *Dred Scott* case was wrongly decided then and must be reversed ab initio now. Such a reversal would allow every Black American to look to his or her ancestry with pride. And such a reversal would allow the Court to recognize the life and liberty interests of unborn children. Only then will there be justice for all.

Finally, we note that the petitioners have dealt extensively with the elements of intervening as of right, with the requirement of being an intervenor as of right being subsumed within the more demanding requirements of being a non-joined indispensable party.

The threshold element of timeliness is met in four ways.

First, since a court itself can raise the issue of non-

joined indispensable parties even on appeal, the motion of non-joined indispensable parties to intervene at the district court level must be deemed timely as a matter of law. To hold otherwise--allowing the court itself to raise the issue at a late time while on appeal, but not allowing the non-joined indispensable parties to raise the issue themselves--would erect a logically inconsistent framework within the law.

Second, for similar reasons a motion to intervene at the district court level to raise issues of the court's subject matter jurisdiction must be deemed timely as a matter of law, for such issues can likewise be raised sua sponte on appeal.

Third, the person whose interests were sought to be upheld, Baby Scholberg, was incompetent throughout the course of the proceedings. How can an incompetent be charged with being untimely?

Fourth, caught between the need on the one hand to act swiftly to defend their interests once it can be seen clearly that the representation can not be deemed adequate, and the need on the other hand to refrain from troubling the court with a motion to intervene prior to that time, the motion by the petitioners to intervene in the district court was made at precisely the time that best complies with these two opposite considerations. See *United Airlines v. McDonald*, 423 U.S. 385 (1977)

As to the element of having an interest in the matter, the interest of not being experimented on or sold is plainly seen.

As to the element of that interest being impaired, as a practical matter, if intervention is not granted, any

delay caused by pursuing collateral proceedings would expose the unborn children of the State of Illinois to death or maiming during the pendency of the proceedings. This is a rather practical impairment of their interests.

The element of the inadequacy of the representation has already been fully discussed by the petitioners.

In conclusion, we turn to the words of Dr. Martin Luther King, Jr., when he spoke on August 28, 1963 in Washington, D.C.:

> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal."

We truly believe that the day has come for the Supreme Court of the United States to rise up and to say no, not in America, for here we are all truly equal.

CONCLUSION

For all of the foregoing reasons, we are asking The Supreme Court of the United States of America to grant the Petition for Writ of Certiorari.

Respectfully submitted,

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